

EDWARD DICUS and LYNN DICUS vs. ANDREW BURNS VASSELL; KAREN ANN MARIE VASSELL; and METROPOLITAN CASUALTY INSURANCE CO.

Docket No.: 05-7608 AD; FJVR Reference No. 07:12-40

Verdict Date: **April** 13, 2007; Publication Date: **December** 2007

**TOPIC:** Defense Verdicts - Insurance - Motor Vehicles - Motor Vehicle Accident - Failure to Yield

**RESULT:** For the Defendants. (verdict)

**STATE:** Florida

**COUNTY:** Palm Beach

**JUDGE:** Timothy McCarthy

**PLAINTIFF PROFILE:** Age: 43

Sex: Male

Occupation: Air Conditioning Repairman

**PLAINTIFF ATTORNEY:** Louis R. Battista and Thomas E. Buser of Krupnick, Campbell, et al., Ft. Lauderdale

**DEFENDANT ATTORNEY:** Daniel J. **Santaniello**, Paul Jones, and Marc M. Greenberg of **Luks, Santaniello**, et al., Boca Raton/Orlando; Dan Methe of Gaunt, Pratt, et al., W. Palm Beach

**CAUSE OF INJURY:** On October 26, 2004, Defendant Andrew allegedly failed to yield the right-of-way at the intersection of Central Industrial Drive and Prospect Avenue in Riviera Beach. Plaintiff was stopped at a stop sign and proceeded through the intersection when Andrew swerved into the opposite lane of travel, striking Plaintiff. Defendants denied liability, maintaining that Andrew had no stop sign and thus had no obligation to yield the right-of-way to Plaintiff. Plaintiff alleged that Andrew was speeding, not paying attention, and should have yielded to Plaintiff who was in the intersection prior to Defendant. Defendants' expert, Donald Felicella, opined that Andrew was traveling the speed limit at the time of impact, however, Defendants' expert did not perform any calculations of Andrew's speed prior to impact, nor did their impact speed calculations take into account the fact that Andrew had pressed his brakes the entire time prior to impact. Though the impact was severe, Defendants denied liability. Plaintiff also maintained a policy of insurance with Defendant Metropolitan Casualty Insurance for underinsured motorist coverage.

**NATURE OF INJURY:** Full thickness right rotator cuff tear requiring surgery. Plaintiff maintained that the injury to his right shoulder was permanent, causing him to engage in less labor-intensive activities at work, a diminished family lifestyle, and the inability to engage in leisure activities such as playing softball, racing high-performance cars, and engaging in activities such as football with his two children. Defendant alleged that Plaintiff's injury was pre-existing.

**PLAINTIFF EXPERT WITNESSES:** Alan Lazar, M.D., Orthopedic Surgery, Plantation  
Ronald Landau, M.D., Radiology, Ft. Lauderdale  
Neil Scharf, D.C., Chiropractic, Parkland  
J.D. Fotopolous, D.O, Internal Medicine, Ft. Lauderdale  
Martin H. Garcia, Civil Engineer, Greenacres

**DEFENDANT EXPERT WITNESSES:** Jeffrey Penner, M.D., Orthopedic Surgery,  
Atlantis  
Donald J. Felicella, Accident Reconstruction, W. Palm Beach

EDITOR'S NOTE: The jury found the negligence of Defendant Andrew was not the legal cause of loss, injury, or damages to Plaintiff. Prior to trial, Plaintiff filed a Proposal for Settlement for \$ 10,000 to Andrew, and \$ 100,000 to Defendant Metropolitan Casualty Insurance. Andrew filed a Proposal for Settlement for \$ 1,501, but later accepted Plaintiff's \$ 10,000 Proposal for Settlement. However, the UM carrier would not release Andrew. They tendered the \$ 10,000, and maintained their subrogation rights. Metropolitan Casualty Insurance also filed a Proposal for Settlement for \$ 1,000.

PLAINTIFF'S ATTORNEY'S COMMENTS: Louis Battista: Based on Plaintiff's Motion for New Trial, Defendants agreed to waive their Motions for Fees and Costs under their Proposal for Settlements in exchange for Plaintiff's waiver of new trial and appeal. The UM carrier also paid a nominal settlement amount. Plaintiff's Motion for New Trial alleged three crucial errors by the court which were germane to the outcome: (1) the court prohibited the intersection yield statute jury instruction, Fla. Stat. § 316.121. See Copertino; (2) the court prohibited any Voir Dire on the jury's feelings and attitudes or obligations of drivers at stop signs and intersections. See Ingrassia, Lavado; and (3) the court allowed into evidence, by affidavit instead of by a records custodian, medical records which called Plaintiff's credibility into question. See Fla. Stat. § 90.803(6)(c).